Hepting et al v. AT&T Corp. et al Doc. 286

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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|---|---|
| TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN, on Behalf of Themselves and All Others Similarly Situated,<br><br>Plaintiffs,<br><br>v.<br><br>AT&T CORP., et al.,<br><br>Defendants. | No. C-06-0672-VRW<br><br>**CLASS ACTION**<br><br>**PLAINTIFFS' NOTICE OF MOTION AND MOTION TO FILE THE DEMONSTRATIVE PRESENTATION PRESENTED AT THE JUNE 23, 2006 HEARING UNDER SEAL**<br><br>Courtroom: 6, 17th Floor<br>Judge: The Hon. Vaughn R. Walker, Chief Judge |

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PLEASE TAKE NOTICE that plaintiffs Tash Hepting, Gregory Hicks, Carolyn Jewel and Erik Knutzen will and hereby do move the Court, pursuant to Civil Local Rules 7-11 and 75-9(b), for an order allowing Plaintiffs to file the demonstrative exhibits presented to the Court, and served on Defendants, at the June 23, 2006 hearing on the Government's Motion to Dismiss, under seal.

Plaintiffs seek this administrative order based on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, the Declaration of Elena M. DiMuzio filed herewith, and all associated papers.

## MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs seek leave to file the demonstrative presentation, labeled "Plaintiffs' Demonstrative Presentation" and presented to the Court at the June 23, 2006 hearing, under seal. Plaintiffs make that request in good faith to protect information that Defendant AT&T Corp. alleges to be trade secret which is quoted in the demonstrative presentation.

## I. ARGUMENT

As discussed in Plaintiffs' motion to file documents under seal in connection with the preliminary injunction motion pending in this matter, Defendant AT&T Corp. ("AT&T") asserts that evidence developed by Plaintiffs includes AT&T's confidential trade secrets. While Plaintiffs contest AT&T's characterization and reserve all rights to dispute whether particular information rises to the level of a trade secret (or other information that should be subject to sealing), Plaintiffs nevertheless seek to proceed in good faith to address AT&T's concerns.

Plaintiffs made a demonstrative presentation to the Court at the June 23, 2006 hearing. The Court has instructed Plaintiffs to file a copy with the Court. It is Plaintiffs' understanding that the presentation discussed information that AT&T asserts constitutes proprietary trade secrets. The material set forth in the presentation has already been filed under seal in the Marcus and Klein Declarations, which were submitted to the Court with Plaintiffs' Motion for Preliminary Injunction.

Plaintiffs make this request without suggesting that any material in the demonstrative exhibits are trade secrets, state secrets, or otherwise confidential, and without waiver to Plaintiffs' right to argue that any of the materials in these documents are non-confidential. Plaintiffs are awaiting a response to the proposed protective order they have submitted to Defendants, and anticipate that the parties can reach an agreement regarding a protective order governing documents in this case.

## II. CONCLUSION

For the foregoing reasons, Plaintiffs request leave to file the Demonstrative Presentation under seal.

DATED: June 28, 2006

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the following non-CM/ECF participants:

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